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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 161118999-7280-02]

RIN 0648-BG46

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 28

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS approves and implements through regulations the measures included in Framework Adjustment 28 to the Atlantic Sea Scallop Fishery Management Plan, which the New England Fishery Management Council adopted and submitted to NMFS for approval. The purpose of Framework 28 is to prevent overfishing, improve yield-per-recruit, and improve the overall management of the Atlantic sea scallop fishery. Framework 28: Sets specifications for the scallop fishery for fishing year 2017; revises the way we allocate catch to the limited access general category individual fishing quota fleet to reflect the spatial management of the scallop fishery; and implements a 50-bushel shell stock possession limit for limited access vessels inshore of the days-at-sea demarcation line north of 42° 20' N. lat.

DATES: Effective March 23, 2017.

ADDRESSES: The Council developed an environmental assessment (EA) for this action that describes the action and other considered alternatives and provides a thorough analysis of the impacts of these measures. Copies of the Framework, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EA/IRFA is also accessible via the Internet at:
<http://www.nefmc.org/scallops/index.html>.

Copies of the small entity compliance guide are available from John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930-2298, or available on the internet at:
<http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/scallop/>.

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978-281-9233.

SUPPLEMENTARY INFORMATION:

Background

The Council adopted Framework 28 on November 17, 2016, and submitted a draft of the framework to NMFS on December 21, 2016, that presented Council recommended measures, rationale, impacts for review, and a draft EA. NMFS published a proposed rule, including a reference on how to obtain the framework and the draft final EA, for approving and implementing Framework 28 on January 19, 2017 (82 FR 6472). The proposed rule included a 15-day public comment period that closed on February 7, 2017. The Council submitted a final EA to NMFS on March 10, 2017, for approval. This annual action includes catch, effort, and

quota allocations and adjustments to the rotational area management program for fishing year 2017. Framework 28 specifies measures for fishing year 2017, and includes fishing year 2018 measures that will go into place as a default should the next specifications-setting framework be delayed beyond the start of fishing year 2018. NMFS has approved all of the measures recommended by the Council and described below. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) permits NMFS to approve, partially approve, or disapprove measures proposed by the Council based only on whether the measures are consistent with the fishery management plan, the Magnuson-Stevens Act and its National Standards, and other applicable law. We must defer to the Council's policy choices unless there is a clear inconsistency with the law or the FMP. Details concerning the development of these measures were contained in the preamble of the proposed rule and are not repeated here.

Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACLs), Annual Catch Targets (ACTs), Annual Projected Landings (APLs) and Set-Asides for the 2017 Fishing Year and Default Specifications for Fishing Year 2018

Table 1 outlines the scallop fishery catch limits derived from the ABC values and the projected landings of the fleet.

Table 1. Scallop Catch Limits (mt) for fishing years 2017 and 2018 for the limited access and LAGC IFQ fleets.

Catch limits	2017 (mt)	2018 (mt)*
Overfishing Limit	75,485	69,678
Acceptable Biological Catch/ACL (discards removed)	46,737	43,142
Incidental Catch	23	23

Research Set-Aside (RSA)	567	567
Observer Set-Aside	467	431
ACL for fishery	45,680	42,121
Limited Access ACL	43,167	39,804
LAGC Total ACL	2,512	2,317
LAGC IFQ ACL (5% of ACL)	2,284	2,106
Limited Access with LAGC IFQ ACL (0.5% of ACL)	228	211
Limited Access ACT	38,623	35,614
APL	20,516	*
Limited Access Projected Landings (94.5% of APL)	19,388	*
Total IFQ Annual Allocation (5.5% of APL)	1,129	846**
LAGC IFQ Annual Allocation (5% of APL)	1,026	769**
Limited Access with LAGC IFQ Annual Allocation (0.5% of APL)	103	77**

**The catch limits for the 2018 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2018 that will be based on the 2017 annual scallop surveys.*

***As a precautionary measure, the 2018 IFQ annual allocations are set at 75% of the 2017 IFQ Annual Allocations.*

This action deducts 1.25 million lb (567 mt) of scallops annually for 2017 and 2018 from the ABC and sets it aside as the Scallop RSA to fund scallop research and to compensate participating vessels through the sale of scallops harvested under RSA projects. As of March 1, 2017, this set-aside has been available for harvest by RSA-funded project in the open area. Framework 28 allows RSA to be harvested from the Mid-Atlantic Access Area (MAAA), but would prevent RSA harvesting from access areas under 2018 default measures. Framework 28 also clarifies that RSA cannot be harvested from the Northern Gulf of Maine (NGOM)

management area. Of this 1.25 million lb (567 mt) allocation, NMFS has already allocated 63,204 lb (28.7 mt) to previously-funded multi-year projects as part of the 2016 RSA awards process. NMFS reviewed proposals submitted for consideration of 2017 RSA awards and announced project selections on March 17, 2017. Details on the 2017 RSA awards can be found on our website here: <http://www.nefsc.noaa.gov/coopresearch/news/scallop-rsa-2017-18/>

This action also sets aside 1 percent of the ABC for the industry-funded observer program to help defray the cost to scallop vessels that carry an observer. The observer set-asides for fishing years 2017 and 2018 are 467 mt and 431 mt, respectively. In fishing year 2017, the compensation rates for limited access vessels in open areas fishing under days-at-sea (DAS) is 0.12 DAS per DAS fished. For access area trips, the compensation rate is 200 lb (91 kg), in addition to the vessel's possession limit for the trip for each day or part of a day an observer is onboard. LAGC IFQ vessels may possess an additional 200 lb (91 kg) per trip in open areas when carrying an observer. NMFS may adjust the compensation rate throughout the fishing year, depending on how quickly the fleets are using the set aside. The Council may adjust the 2018 observer set-aside through its development non-default measures for 2018.

Open Area DAS Allocations

This action implements vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (i.e., full-time, part-time, and occasional) for 2017 and 2018 (Table 2). Framework 28 sets 2018 DAS allocations at 75 percent of fishing year 2017 DAS allocations as a precautionary measure. This is to avoid over-allocating DAS to the fleet in the event that the 2018 specifications action, if delayed past the start of the 2018 fishing year, estimates that DAS should be less than currently projected. The allocations in Table 2 exclude

any DAS deductions that are required if the limited access scallop fleet exceeded its 2016 sub-ACL. In addition, these DAS values take into account a 0.14-DAS reduction necessary to compensate for a measure implemented in Framework Adjustment 26 to the FMP (80 FR 22119; April 21, 2015) that allows vessels to transit to ports south of 39° N. lat. while not on DAS. The DAS also include a 4.7 percent increase because the 2017 fishing year will be 13 months long to account for the change in the start of the fishing year (from March 1 to April 1) implemented through Amendment 19 to the Scallop FMP (81 FR 76516; November 3, 2016).

Table 2. Scallop Open Area DAS Allocations for 2017 and 2018.

Permit Category	2017	2018 (Default)
Full-Time	30.41	21.75
Part-Time	12.16	8.69
Occasional	2.54	1.91

Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

For fishing year 2017, Framework 28 keeps the MAAA open as an access area and also opens the Nantucket Lightship Access Area (NLS) and Closed Area 2 Access Area (CA2). In addition, this action opens the Elephant Trunk Closed Area and allows full-time vessels to choose to fish up to 18,000 lb (8,165 kg) in the Elephant Trunk area or they may choose to fish this allocation in the MAAA. Because of the flexible trip option for the Elephant Trunk area, this action renames the area the Elephant Trunk Flex Access Area (ETFA) for 2017. Framework 28 also implements a seasonal closure of the ETFA, from July 1 through September 30, to help reduce the discard mortality of small scallops during the warmest months of the year. For the

2018 fishing year, full-time limited access vessels will be allocated 18,000 lb (8,165 kg) in the MAAA only with a trip possession limit of 18,000 lb (8,165 kg) per trip.

Table 3 outlines the limited access full-time allocations for all of the access areas, which could be taken in as many trips as needed, so long as the vessels do not exceed the possession limit (also in Table 3) on each trip.

Table 3. Scallop Access Area Full-Time Limited Access Vessel Poundage Allocations and Trip Possession Limits for 2017 and 2018.

Rotational Access Area	Scallop Trip Possession Limit	2017 Scallop Allocation	2018 Scallop Allocation (<i>Default</i>)
Closed Area 2	18,000 lb (8,165 kg)	18,000 lb (8,165 kg)	0 lb (0 kg)
Nantucket Lightship	18,000 lb (8,165 kg)	18,000 lb (8,165 kg)	0 lb (0 kg)
Mid-Atlantic	18,000 lb (8,165 kg)	18,000 lb (8,165 kg)	18,000 lb (8,165 kg)
Elephant Trunk Flex	18,000 lb (8,165 kg)	18,000 lb (8,165 kg)*	0 lb (0 kg)
Total		72,000 lb (32,660 kg)	18,000 lb (8,165 kg)

**ETFA allocation can be landed from either the ETFA or the MAAA.*

For the 2017 fishing year only, a part-time limited access vessel is allocated a total of 28,800 lb (13,064 kg) with a trip possession limit of 14,400 lb per trip (6,532 kg per trip). Of the 28,800-lb (13,064-kg) allocation, 14,400 lb (6,532 kg) is allocated exclusively to the MAAA. The remaining 14,400 lb (6,532 kg) may be harvested and landed either from the MAAA or any one other available access area, (CA2, NLS, or ETFA). However, if a vessel chooses to harvest and land the remaining 14,400 lb (6,532 kg) from the ETFA and does not harvest up to the full allocation on a trip, it is only allowed to land the remaining pounds either from the ETFA or the

MAAA. For the 2018 fishing year, part-time limited access vessels will be allocated 14,400 lb (6,532 kg) in the MAAA only with a trip possession limit of 14,400 lb per trip (6,532 kg per trip).

For the 2017 fishing year only, an occasional limited access vessel is allocated 6,000 lb (2,722 kg) with a trip possession limit of 6,000 lb per trip (2,722 kg per trip). Occasional vessels are able to harvest 6,000 lb (2,722 kg) allocation from only one available access area (CA2, NLS, MAAA, or ETFA). For the 2018 fishing year, occasional limited access vessels are allocated 6,000 lb (2,722 kg) in the MAAA only with a trip possession limit of 6,000 lb per trip (2,722 kg per trip).

Limited Access Vessels' One-for-One Area Access Allocation Exchanges

This action clarifies that the owner of a vessel issued a limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated into another access area. These exchanges may only be made for the amount of the current trip possession limit (full-time: 18,000-lb (8,165-kg) and part-time: 14,400 lb (6,532 kg)). In addition, these exchanges may be made only between vessels with the same permit category: A full-time vessel may not exchange allocations with a part-time vessel, and vice versa.

In fishing year 2017, each limited access full-time vessel will be allocated 18,000 lb (8,165 kg) that may be landed from either the ETFA or the MAAA (flex allocation). Such flex allocation may be exchanged in full only for another access area allocation, but only the flex allocation could be landed from the ETFA. For example, if a Vessel A exchanges 18,000 lb (8,165 kg) of flex allocation for 18,000 lb (8,165 kg) of MAAA allocation with Vessel B, Vessel

A would no longer be allowed to land allocation from the ETFA based on its MAAA allocation, but Vessel B could land up to 36,000 lb (16,330 kg) from the ETFA and/or the MAAA, combined.

Prohibition on possessing greater than 50 bushels of shell stock for limited access vessels inshore of the DAS demarcation line north of 42° 20' N. lat.

This action extends the existing prohibition on possessing greater than 50-bushels of shell stock inshore of the DAS demarcation line for limited access vessels to waters north of 42° 20' N. lat. to prevent limited access vessels from shucking scallops off the DAS clock. This prohibition is now fishery-wide.

LAGC Measures

1. *LAGC IFQ Fleet Allocation Based on Spatial Management.* To help ensure that the allocation of potential landings between the fleets is more consistent with the concept of spatial management, this action changes the way the LAGC IFQ allocations are set from a direct percentage of the ACL to a percentage of the APL. This results in an approximate 55 percent reduction in the allocation from the current method of allocation (status quo) for 2017 (2.49 million lb (1,129 mt) based on projected catch compared to 5.5 million lb (2,512 mt) based on stock-wide ACL). This new method of allocating to the LAGC IFQ fleet reduces the risk of LAGC IFQ allocations resulting in higher realized F rates in certain areas than predicted in the model.

2. *ACL and IFQ allocation for LAGC vessels with IFQ permits.* For LAGC vessels with IFQ permits, this action implements a 2,284-mt ACL for 2017 and a default ACL of 2,106 mt for 2018 (see Table 1). These sub-ACLs have no associated regulatory or management

requirements, but provide a ceiling on overall landings by the LAGC IFQ fleets. The annual allocations to the LAGC IFQ-only fleet for fishing years 2017 and 2018 based on APL are 1,026 mt and 769 mt, respectively (see Table 1). The 2017 allocation includes a 4.7-percent increase because the 2017 fishing year will be 13 months long to account for the change in the start of the fishing year (from March 1 to April 1) implemented through Amendment 19 to the Scallop FMP.

3. *ACL and IFQ allocation for Limited Access Scallop Vessels with IFQ Permits.* For limited access scallop vessels with IFQ permits, this action implements a 228-mt ACL for 2017 and a default 211-mt ACL for 2018 (see Table 1). As explained above, this action changes the way the Council and NMFS calculate IFQ allocations by applying each vessel's IFQ contribution percentage to this fleet's percentage (i.e., 0.5 percent) of the projected landings. The annual allocations to limited access vessels with IFQ permits for fishing years 2017 and 2018 are 103 mt and 77 mt, respectively (see Table 1). The 2017 allocation includes a 4.7 percent increase because the 2017 fishing year will be 13 months long to account for the change in the start of the fishing year (from March 1 to April 1) implemented through Amendment 19 to the Scallop FMP.

4. *LAGC IFQ Trip Allocations for Scallop Access Areas.* Framework 28 allocates LAGC IFQ vessels a fleetwide number of trips in the NLS, MAAA, and ETFA for fishing year 2017 and default fishing year 2018 trips in the MAAA (see Table 4). The total number of trips for both areas combined (2,230) for fishing year 2017 is equivalent to the 5.5 percent of total catch from access areas. This action does not allocate any LAGC IFQ trips into CA2 because many of these vessels do not fish in that area due to its distance from shore. Because the IFQ vessels would not be able to access CA2, Framework 28 shifts those trips that would have been allocated to CA2 to other access areas closer to shore, so that LAGC IFQ vessels have the

opportunity to utilize their access area trips. This action allocates 558 trips that would have been allocated to CA2 into NLS (280 trips), MAAA (139), and ETFA (139).

Table 4. LAGC IFQ Trip Allocations for Scallop Access Areas.

Access Area	2017	2018 (<i>Default</i>)
NLS	837	-
MAAA	697	558
ETFA	697	-
Total	2,231	558

5. *NGOM TAC*. This action implements a 95,000-lb (43,091 kg) annual NGOM TAC for fishing years 2017 and 2018. During the 2016 fishing year there was a 21,629-lb (9,811-kg) overage of the NGOM TAC. This triggers a pound-for-pound deduction in 2017 to account for the overage. Therefore, the 2017 NGOM TAC is 73,371 lb (33,281 kg) to account for the overage.

6. *Scallop Incidental Catch Target TAC*. This action implements a 50,000-lb (22,680-kg) scallop incidental catch target TAC for fishing years 2017 and 2018 to account for mortality from this component of the fishery, and to ensure that F targets are not exceeded. The Council and NMFS may adjust this target TAC in a future action if vessels catch more scallops under the incidental target TAC than predicted.

RSA Harvest Restrictions.

This action prohibits vessels participating in RSA projects from harvesting RSA compensation from CA2, NLS, and ETFA during the 2017 fishing year to control F, reduce

impacts on flatfish, and reduce impacts on high densities of scallops with growth potential. Further, this action clarifies that the harvest of RSA compensation from the NGOM is prohibited. During the 2017 fishing year, all RSA compensation fishing must take place in either the open area or the MAAA. In addition, Framework 28 prohibits the harvest of RSA from any access areas under default 2018 measures. At the start of 2018, RSA compensation may only be harvested from the open area. The Council may re-evaluate this measure in the action that would set final 2018 specifications.

Regulatory Corrections Under Regional Administrator Authority

This rule includes a revision to the regulatory text to address a typographical error in the regulations. NMFS proposes this change consistent with section 305(d) of the MSA which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the MSA. This revision corrects the error at § 648.14(i)(4)(i)(G).

Comments and Responses

We received four comments on the proposed rule during the public comment period; three in support of the action and one against specific measures. An IFQ vessel owner, Lund's Fisheries Incorporated, and the Fisheries Survival Fund (FSF) (which represents a majority of the limited access scallop fleet) wrote in support of the rule. The following summarizes the issues raised in the comments and NMFS's responses.

Comment 1: Both Lund's Fisheries Incorporated and FSF encouraged NMFS to implement Framework 28 without delay, specifically regarding the Executive Order (E.O.) titled Reducing Regulation and Controlling Regulatory Costs.

Response: To help ease the burden on the industry, NMFS intends to make Framework 28 effective upon filing for public inspection in the **Federal Register** by waiving the 30-day delay in effectiveness required under the Administrative Procedures Act (see the Classification section below in this preamble). Office of Management and Budget (OMB) guidance clarifies that E.O. 13771, titled Reducing Regulation and Controlling Regulatory Costs (January 30, 2017), only applies to significant rules pursuant to E.O. 12866. OMB has determined that this rule is not significant pursuant to E.O. 12866. Therefore, Framework 28 is not subject to the requirements of E.O. 13771.

Comment 2: One commenter, an IFQ vessel owner and operator, suggested that we should not open the access areas in April due to safety and scallop meat yield concerns.

Response: Vessel operators must decide throughout the year when it is safe to fish and when it is not. We expect IFQ access area trips to be available well into May and beyond in some areas. Therefore, we do not believe that IFQ vessels will be forced to operate in unsafe conditions. We agree that meat yields are not at their peak in April, but this is consistent with scheduled opening of the MAAA in the default measures for fishing year 2017 that was put in place for this very reason. The Council did not discuss a closure or a delayed opening for the access areas, and it would be beyond our authority to postpone opening for reasons related to yield from the scallop resource and fishing mortality.

Comment 3: The IFQ vessel owner was concerned about the reduction in IFQ allocation from last year. He fears that the smaller vessels will not be profitable with the smaller quota in 2017 and that consolidation will continue on larger boats.

Response: The proposed IFQ reduction is a result of setting the allocation based on the projected landings as opposed to the ACL. The Council preferred this method because it was more consistent with the intent of Amendment 11 to the Scallop FMP (73 FR 20089; April 14, 2008), and because there is less potential to cause harm to the scallop biomass. The ownership caps in the LAGC IFQ fleet of 5 percent per owner and 2.5 percent per vessel remain in place to prevent excessive consolidation in the fleet.

Comment 4: The IFQ vessel owner commented that the observer costs were too high for LAGC IFQ boats when trips extended beyond a single day because LAGC IFQ boats are compensated 175 lb (79 kg) per trip as opposed to 175 lb (79 kg) per day.

Response: The Council chose to compensate the LAGC IFQ fleet for carrying observers on a per-trip basis because the majority of LAGC IFQ trips are less than one full day. In developing Framework 28, the Council's Scallop Advisory Panel did not believe that additional compensation was necessary for these trips. However, for fishing year 2017, LAGC IFQ vessels will be compensated 200 lb (91 kg) per trip to help offset the costs of observers.

Changes from Proposed Rule to Final Rule

We corrected a typographical error at § 648.60(b) to better define the Elephant Trunk Flex Scallop Rotational Area, and we included changes to the regulatory text at § 648.59(g)(2) to clarify that LAGC IFQ vessels may use trawl gear in access areas west of 72° 30' W. long.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, the ESA, and other applicable law.

OMB has determined that this rule is not significant pursuant to E.O. 12866.

This final rule does not contain policies with federalism or “takings” implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This action does not contain any collection-of-information requirements subject the Paperwork Reduction Act (PRA).

The Assistant Administrator for Fisheries has determined that the need to implement these measures in an expedited manner, in order to help achieve conservation objectives for the scallop fishery and certain fish stocks, and to relieve other restrictions on the scallop fleet, constitutes good cause, under authority contained in 5 U.S.C. 553(d)(1) and (3), to waive the 30-day delay in effectiveness and to make Framework 28 final measures effective upon filing for public inspection in the **Federal Register**.

Framework 28 will implement slightly reduced DAS allocations to the limited access fleet and significantly reduced allocation (44 percent) to the LAGC IFQ fleet. Ultimately, the scallop industry will be subject to these lower allocations. Therefore, delaying the implementation of these measures for 30 days would be contrary to the public interest because it would cause confusion for the fishing year. In addition, these lower allocations were set to reduce F in the fishery and implementing them as soon as possible will have conservation benefits to the scallop resource.

Further, this action extends the 50-bushel possession limit of in-shell scallops for limited access vessels inshore of the DAS demarcation line north of 42° 20' N. lat., making the restriction coastwide. Under current regulations, limited access vessels are able to shuck scallops off the DAS clock inside of the demarcation line north of 42° 20' N. lat. which allows

them to skirt possession and landing limits. This is an unintended consequence of a provision that is no longer relevant to the fishery. Prohibiting this behavior helps achieve conservation objectives for the scallop fishery by helping to ensure compliance with possession and landing limits.

Until Framework 28 is fully implemented, certain default measures, including access area designations and DAS, IFQ, research set-aside and observer set-aside allocations, are automatically put into place. Under default measures, each full-time vessel has one 17,000-lb (7,711-kg) access area trip in the MAAA. This action, therefore, relieves restrictions on the scallop fleet by providing full-time vessels with an additional 55,000 lb (24,948 kg) in access area allocation (72,000 lb (32,659 kg) total) into the MAAA, NLS, CA2, and ETFA, combined. Further, the LAGC IFQ fleet will receive an additional 95 trips into the MAAA (697 trips total), 697 trips into the ETFA, and 836 trips in the NLS.

Framework 28 could not have been put into place sooner to allow for a 30-day delayed effectiveness because the information and data necessary for the Council to develop the framework was not available in time. Delaying the implementation of Framework 28 for 30 days would delay positive economic benefits to the scallop fleet. Therefore, the Assistant Administrator for Fisheries has waived the 30-day delayed effectiveness requirement to 5 U.S.C. 553(d)(1) and (3).

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has completed a final regulatory flexibility analysis (FRFA) in support of Framework 28 in this final rule. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, a summary of the analyses

completed in the Framework 28 EA, and this portion of the preamble. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in Framework 28 and in the preamble to the proposed and this final rule, and is not repeated here. All of the documents that constitute the FRFA are available from NMFS and a copy of the IRFA, the Regulatory Impact Review (RIR), and the EA are available upon request (see **ADDRESSES**).

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

There were no specific comments on the IRFA. The Comments and Responses section summarizes the comments that highlight concerns about the economic impacts and implications of impacts on small businesses (i.e., comments 3 and 4).

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The regulations affect all vessels with limited access and LAGC scallop permits. The Framework 28 EA provides extensive information on the number and size of vessels and small businesses that will be affected by the regulations, by port and state (see **ADDRESSES**). Fishing year 2015 data were used for this analysis because these data are the most recent complete data set for a fishing year. There were 313 vessels that obtained full-time limited access permits in 2015, including 250 dredge, 52 small-dredge, and 11 scallop trawl permits. In the same year, there were also 34 part-time limited access permits in the sea scallop fishery. No vessels were issued occasional scallop permits. NMFS issued 217 LAGC IFQ permits in 2015,

and 119 of these vessels actively fished for scallops that year. The remaining permits likely leased out scallop IFQ allocations with their permits in Confirmation of Permit History.

The RFA defines a small business in shellfish fishery as a firm that is independently owned and operated with receipts of less than \$11 million annually (see NMFS final rule revising the small business size standard for commercial fishing, 80 FR 81194, December 29, 2015). Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by the final rule. Furthermore, multiple permitted vessels and/or permits may be owned by entities with various personal and business affiliations. For the purposes of this analysis, “ownership entities” are defined as those entities with common ownership as listed on the permit application. Only permits with identical ownership are categorized as an “ownership entity.” For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one “ownership entity,” that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate “ownership entity” for the purpose of this analysis.

On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. The current ownership dataset is based on the calendar year 2015 permits and contains average gross sales associated with those permits for calendar years 2013 through 2015. Matching the potentially impacted 2015 fishing year permits described above (limited access and LAGC IFQ) to calendar year 2015 ownership data results in 154 distinct ownership entities for the limited access fleet and 87 distinct ownership entities for the LAGC IFQ fleet. Of these, and based on the Small Business Administration guidelines, 141

of the limited access distinct ownership entities and 84 of the LAGC IFQ entities are categorized as small. The remaining 13 of the limited access and 3 of the LAGC IFQ entities are categorized as large entities, all of which are shellfish businesses.

Description of Projected Reporting, Recordkeeping, and other Compliance Requirements of the Final Rule

This action contains no new collection-of-information, reporting, or recordkeeping requirements.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

During the development of Framework 28, NMFS and the Council considered ways to reduce the regulatory burden on, and provide flexibility for, the regulated entities in this action. For instance, Framework 28 allocates LAGC IFQ access trips that would have been allocated in CA2 into NLS, ETFA, and MAAA. Because LAGC vessels are smaller in size and operate with a 600-lb (272-kg) possession limit this option will reduce fishing costs and have positive impacts on their profits. Final actions and alternatives are described in detail in Framework 28, which includes an EA, RIR, and IRFA (available at **ADDRESSES**). The measures implemented by this final rule minimize the long-term economic impacts on small entities to the extent practicable. The only alternatives for the prescribed catch limits that were analyzed were those that met the legal requirements to implement effective conservation measures. Catch limits are fundamentally a scientific calculation based on the Scallop FMP control rules and SSC approval, and therefore are legally limited to the numbers contained in this rule. Moreover, the limited number of alternatives available for this action must be evaluated in the context of an ever-

changing fishery management plan that has considered numerous alternatives over the years and have provided many mitigating measures applicable every fishing year.

Overall, this rule minimizes adverse long-term impacts by ensuring that management measures and catch limits result in sustainable fishing mortality rates that promote stock rebuilding, and as a result, maximize yield. The measures implemented by this final rule also provide additional flexibility for fishing operations in the short-term. This final rule implements measures that enable small entities to offset some portion of the estimated economic impacts. For example, Framework 28 implements an alternative that allocates the largest number of access area trips to the LAGC IFQ fleet compared to other alternatives considered under the spatial management option. This alternative allows up to 53.8 percent (607 mt) of the total LAGC allocation to be harvested from access areas.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 22, 2017.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is to be amended as follows:

PART 648—FISHERIES OF THE NORTHEAST UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14:

a. Revise paragraphs (i)(1)(viii), (i)(2)(iii)(B), and (i)(2)(vi)(B);

b. Add paragraph (i)(2)(vi)(C); and

c. Revise paragraphs (i)(3)(v)(E) and (i)(4)(i)(G).

The revisions and additions read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(viii) *Scallop research.* (A) Fail to comply with any of the provisions specified in §648.56.

(B) Fish for scallops in, or possess or land scallops from, the NGOM on a scallop research set-aside compensation trip as described in § 648.56(d).

* * * * *

(2) * * *

(iii) * * *

(B) Fish for, possess, or land more than 50 bu (17.62 hL) of in-shell scallops inside the VMS Demarcation Line on or by a vessel, except as provided in the state waters exemption, as specified in § 648.54.

* * * * *

(vi) * * *

(B) Transit the Closed Area II Scallop Rotational Area or the Closed Area II Extension Scallop Rotational Area, as defined §648.60(d) and (e), respectively, or the Elephant Trunk Flex Scallop Rotational Area, as defined in §648.60(b), unless there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in §648.2.

(C) Fish for, possess, or land scallops in or from the Elephant Trunk Flex Access Area in excess of the vessel's total Elephant Trunk Flex Access Area specific allocation as specified in § 648.59(b)(3)(i)(B)(I)(ii) or the amount permitted to be landed from the Elephant Trunk Flex Access Area as allowed under trip exchanges specified in § 648.59(b)(3)(ii)(A) and (B).

* * * * *

(3) * * *

(v) * * *

(E) Transit the Elephant Trunk Flex Scallop Rotational Area, Closed Area II Scallop Rotational Area, or the Closed Area II Extension Scallop Rotational Area, as defined § 648.60(b), (d), and (e), respectively, unless there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

* * * * *

(4) * * *

(i) * * *

(G) Fish for, possess, or land more than 40 lb (18.1 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line, when the vessel is not declared into the IFQ scallop fishery, unless the vessel is fishing in compliance with all of the requirements of the State waters exemption program, specified at § 648.54.

* * * * *

3. In § 648.52, revise paragraph (e) to read as follows:

§ 648.52 Possession and landing limits.

* * * * *

(e) Owners or operators of vessels issued limited access permits are prohibited from fishing for, possessing, or landing per trip more than 50 bu (17.6 hl) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under § 648.54.

* * * * *

4. In § 648.53:

- a. Revise the section heading, paragraph (a)(3), and the heading of paragraph (a)(6);
- b. Add paragraph (a)(6)(iii); and
- c. Revise paragraphs (a)(8), (b)(3), the heading of paragraph (h), (h)(2) introductory text, and (h)(2)(i).

The additions and revisions read as follows:

§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, and individual fishing quotas (IFQ).

(a) * * *

(3) *Overall ABC/ACL and APL*—(i) *Overall ABC/ACL*. The overall ABC for sea scallop fishery shall be the catch level that has an associated F that has a 75-percent probability of remaining below the F associated with OFL. The overall ACL shall be equal to the ABC for the scallop fishery, minus discards (an estimate of both incidental and discard mortality). The ABC/ACL, after the discards and deductions specified in paragraph (a)(4) of this section are removed, shall be divided as sub-ACLs between limited access vessels, limited access vessels that are fishing under a LAGC permit, and LAGC vessels as defined in paragraphs (a)(5) and (6) of this section, after the deductions outlined in paragraph (a)(4) of this section.

(ii) *APL*. The APL shall be equal to the combined projected landings by the limited access and LAGC IFQ fleets in both the open area and access areas, after set-asides (RSA and observer) and incidental landings are accounted for, for a given fishing year. Projected scallop landings are calculated by estimating the landings that will come from open and access area effort combined for both limited access and LAGC IFQ fleets. These projected landings shall not exceed the overall ABC/ACL and ACT, as described in paragraph (a) of this section.

* * * * *

(6) *LAGC IFQ fleet sub-ACL, sub-ACT, and annual allocation* * * *

* * * * *

(iii) *LAGC IFQ fleet annual allocation.* The annual allocation for the LAGC IFQ fishery for vessels issued only a LAGC IFQ scallop permit shall be equal to 5 percent of the APL. The annual allocation for the LAGC IFQ fishery for vessels issued both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the APL.

* * * * *

(8) The following catch limits will be effective for the 2017 and 2018 fishing years:

SCALLOP FISHERY CATCH LIMITS

Catch limits	2017 (mt)	2018 (mt) ¹
Overfishing Limit	75,485	69,678
Acceptable Biological Catch/ACL (discards removed)	46,737	43,142
Incidental Catch	23	23
Research Set-Aside (RSA)	567	567
Observer Set-Aside	467	431
ACL for fishery	45,680	42,121
Limited Access ACL	43,167	39,804
LAGC Total ACL	2,512	2,317
LAGC IFQ ACL (5% of ACL)	2,284	2,106
Limited Access with LAGC IFQ ACL (0.5% of ACL)	228	211
Limited Access ACT	38,623	35,614
APL	20,516	¹
Limited Access Projected Landings (94.5% of APL)	19,388	¹
Total IFQ Annual Allocation (5.5% of APL)	1,129	846 ²
LAGC IFQ Annual Allocation (5% of APL)	1,026	769 ²
Limited Access with LAGC IFQ Annual Allocation (0.5% of APL)	103	77 ²

¹The catch limits for the 2018 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2018 that will be based on the

2017 annual scallop surveys. The 2018 default allocations for the limited access component are defined for DAS in paragraph (b)(3) of this section and for access areas in § 648.59(b)(3)(i)(B).

²As a precautionary measure, the 2018 IFQ annual allocations are set at 75% of the 2017 IFQ Annual Allocations.

(b) * * *

(3) The DAS allocations for limited access scallop vessels for fishing years 2017 and 2018 are as follows:

SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2017	2018 ¹
Full-Time	30.41	21.75
Part-Time	12.16	8.69
Occasional	2.54	1.91

¹The DAS allocations for the 2018 fishing year are subject to change through a future specifications action or framework adjustment. The 2018 DAS allocations are set at 75% of the 2017 allocation as a precautionary measure.

* * * * *

(h) *Annual IFQs****

* * * * *

(2) *Calculation of IFQ.* The LAGC IFQ fleet annual allocation as defined in paragraph (a)(6)(iii) of this section, shall be used to determine the IFQ of each vessel issued an IFQ scallop permit. Each fishing year, the Regional Administrator shall provide the owner of a vessel issued an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii) with the scallop IFQ for the vessel for the upcoming fishing year.

(i) *IFQ*. The IFQ for an IFQ scallop vessel shall be the vessel's contribution percentage as specified in paragraph (h)(2)(iii) of this section and determined using the steps specified in paragraph (h)(2)(ii) of this section, multiplied by the LAGC IFQ fleet annual allocation as defined in paragraph (a)(6)(iii) of this section.

* * * * *

5. In § 648.59:

- a. Revise paragraphs (a)(2) and (3), (b)(3)(i)(B), (b)(3)(ii), (e), and (g)(2);
- b. Remove and reserve paragraph (g)(3)(iv); and
- c. Revise paragraph (g)(3)(v).

The additions and revisions read as follows:

§ 648.59 Sea Scallop Rotational Area Management Program and Access Area Program requirements.

(a) * * *

(2) *Transiting a Closed Scallop Rotational Area*. No vessel possessing scallops may enter or be in the area(s) specified in this section when those areas are closed, as specified through the specifications or framework adjustment processes defined in § 648.55, unless the vessel is transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Elephant Trunk Flex Scallop Rotational Area, the Closed Area II Scallop Rotational Area, or the Closed Area II Extension Scallop Rotational Area, as defined § 648.60(b), (d), and (e), respectively, if there is a

compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(3) *Transiting a Scallop Access Area.* Any sea scallop vessel that has not declared a trip into the Scallop Area Access Program may enter a Scallop Access Area, and possess scallops not caught in the Scallop Access Areas, for transiting purposes only, provided the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2. Any scallop vessel that has declared a trip into the Scallop Area Access Program may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area provided its gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Elephant Trunk Flex Scallop Rotational Area, Closed Area II Scallop Rotational Area, or the Closed Area II Extension Scallop Rotational Area, as defined in § 648.60(b), (d), and (e), respectively, if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(b) * * *

(3) * * *

(i) * * *

(B) The following access area allocations and possession limits for limited access vessels shall be effective for the 2017 and 2018 fishing years:

(1) *Full-time vessels*—(i) For a full-time limited access vessel, the possession limit and allocations are:

Rotational Access Area	Scallop Possession Limit	2017 Scallop Allocation	2018 Scallop Allocation (<i>Default</i>)
------------------------	--------------------------	-------------------------	--

Closed Area 2	18,000 lb (8,165 kg) per trip	18,000 lb (8,165 kg)	0 lb (0 kg)
Nantucket Lightship		18,000 lb (8,165 kg)	0 lb (0 kg)
Mid-Atlantic		18,000 lb (8,165 kg)	18,000 lb (8,165 kg)
Elephant Trunk Flex		18,000 lb (8,165 kg) ¹	0 lb (0 kg)
Total		72,000 lb (32,660 kg)	18,000 lb (8,165 kg)

¹Elephant Trunk Flex Access Area allocation can be landed from either the Elephant Trunk Flex Access Area or the Mid-Atlantic Access Area, as described in paragraph (B)(1)(ii) of this section.

(ii) *Elephant Trunk Flex Access Area allocations.* Subject to the seasonal restriction specified in § 648.60(b)(2), for the 2017 fishing year only, a full-time vessel may choose to land up to 18,000 lb (8,165 kg) of the Mid-Atlantic Rotational Access Area allocation from the Elephant Trunk Flex Access Area, which shall be known as an *Elephant Trunk Flex Access Area allocation*. For example, Vessel A could take a trip in to the Elephant Trunk Flex Access Area and land 18,000 lb (8,165 kg) from that area on one trip, leaving the vessel with 18,000 lb (8,165 kg) of the Mid-Atlantic Rotational Access Area allocation; or, alternatively, the vessel could take a trip in to the Elephant Trunk Flex Access Area and land 15,000 lb (6,804 kg), leaving the vessel with 21,000 lb (9,525 kg) of Mid-Atlantic Access Area allocation, and, 3,000 lb (1,361 kg) of flex allocation which could be landed from the Elephant Trunk Flex Access Area on another trip, provided the 18,000 lb possession limit is not exceeded on any one trip.

(iii) For the 2018 fishing year, full-time limited access vessels are allocated 18,000 lb (8,165 kg) in the Mid-Atlantic Access Area only with a trip possession limit of 18,000 lb (8,165 kg).

(2) *Part-time vessels.* (i) For the 2017 fishing year only, a part-time limited access vessel is allocated a total of 28,800 lb (13,064 kg) of scallops with a trip possession limit of 14,400 lb

of scallops per trip (6,532 kg per trip). Of the 28,800-lb (13,064-kg) allocation, 14,400 lb (6,532 kg) are allocated exclusively to the Mid-Atlantic Access Area. The remaining 14,400 lb (6,532 kg) can be landed either from the Mid-Atlantic Access Area or any one other available access area (Closed Area 2, Nantucket Lightship, or Elephant Trunk Flex Access Areas). However, if a vessel chooses to land the remaining 14,400 lb (6,532 kg) from the Elephant Trunk Flex Access Area and does not land up to the full allocation on a trip, it may only land the remaining pounds either from the Elephant Trunk Flex Access Areas or the Mid-Atlantic Access Area.

(ii) For the 2018 fishing year, part-time limited access vessels are allocated 14,400 lb (6,532 kg) of scallops in the Mid-Atlantic Access Area only with a trip possession limit of 14,400 lb of scallops per trip (6,532 kg per trip).

(3) *Occasional vessels.* (i) For the 2017 fishing year only, an occasional limited access vessel is allocated 6,000 lb (2,722 kg) of scallops with a trip possession limit at 6,000 lb of scallops per trip (2,722 kg per trip). Occasional vessels may harvest the 6,000 lb (2,722 kg) allocation from only one available access area (Closed Area 2, Nantucket Lightship, Mid-Atlantic, or Elephant Trunk Flex Access Areas).

(ii) For the 2018 fishing year, occasional limited access vessels are allocated 6,000 lb (2,722 kg) of scallops in the Mid-Atlantic Access Area only with a trip possession limit of 6,000 lb of scallops per trip (2,722 kg per trip).

(ii) *Limited access vessels' one-for-one area access allocation exchanges.* (A) The owner of a vessel issued a limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated into another Scallop Access Area. These exchanges may only be made for the amount of the current

trip possession limit, as specified in paragraph (b)(3)(i)(B) of this section. For example, if the access area trip possession limit for full-time vessels is 18,000 lb (8,165 kg), a full-time vessel may exchange no more or less than 18,000 lb (8,165 kg), from one access area for no more or less than 18,000 lb (8,165 kg) allocated to another vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective.

Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A vessel owner may exchange equal allocations up to the current possession limit between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

(B) *Flex allocation exchanges.* In fishing year 2017, each limited access full-time vessel is allocated 18,000 lb (8,165 kg) that may be landed from either the Elephant Trunk Flex Access Area or the Mid-Atlantic Access Area (flex allocation). Such flex allocation may be exchanged in full only for another access area allocation, but only the flex allocation may be landed from

the Elephant Trunk Flex Access Area. For example, if a Vessel A exchanges 18,000 lb (8,165 kg) of flex allocation for 18,000 lb (8,165 kg) of Mid-Atlantic Access Area allocation with Vessel B, Vessel A would no longer be allowed to land allocation from the Elephant Trunk Flex Access Area based on its Mid-Atlantic Access Area allocation, but Vessel B could land up to 36,000 lb (16,330 kg) from the Elephant Trunk Flex Access Area and/or the Mid-Atlantic Access Area, combined.

* * * * *

(e) *Sea Scallop Research Set-Aside Harvest in Scallop Access Areas.* Unless otherwise specified, RSA may be harvested in any access area that is open in a given fishing year, as specified through a specifications action or framework adjustment and pursuant to §648.56. The amount of scallops that can be harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process.

The access areas open for RSA harvest for fishing years 2017 and 2018 are:

(1) 2017: Mid-Atlantic Access Area.

(2) 2018: No access areas.

* * * * *

(g) * * *

(2) *Limited Access General Category Gear restrictions.* An LAGC IFQ scallop vessel authorized to fish in the Scallop Rotational Areas specified in § 648.60 that lay east of 72° 30' W. lat. must fish with dredge gear only. The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in these areas may not exceed 10.5 ft (3.2 m). The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing

in the remaining Scallop Rotational Areas defined in § 648.60 may not exceed 31 ft (9.4 m).

Dredge width is measured at the widest point in the bail of the dredge.

(3) * * *

(v) The following LAGC IFQ access area allocations will be effective for the 2017 and 2018 fishing years:

Scallop access area	2017	2018 ¹
Mid-Atlantic	697	558
Elephant Trunk Flex	697	0
Nantucket Lightship	837	0

¹The LAGC IFQ access area trip allocations for the 2018 fishing year are subject to change through a future specifications action or framework adjustment.

* * * * *

6. In § 648.60, revise paragraph (b) to read as follows:

§ 648.60 Sea Scallop Rotational Areas.

* * * * *

(b) *Elephant Trunk Flex Scallop Rotational Area.* (1) The Elephant Trunk Flex Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request).

Point	Latitude	Longitude
ETFA 1	38°50' N	74°20' W.
ETFA 2	38°50' N	73°40' W.
ETFA 3	38°40' N	73°40' W.

ETFA 4	38°40' N	73°50' W.
ETFA 5	38°30' N	73°50' W.
ETFA 6	38°30' N	74°20' W.
ETFA 1	38°50' N	74°20' W.

(2) *Season.* A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Elephant Trunk Flex Scallop Rotational Area, defined in paragraph (b)(1) of this section, during the period of July 1 through September 30 of each year the Elephant Trunk Flex Scallop Rotational Area is open to scallop vessels, unless transiting pursuant to § 648.59(a).

* * * * *

7. In § 648.62, revise paragraph (b)(1) to read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

* * * * *

(b) * * *

(1) *NGOM annual hard TACs.* The annual hard TAC for the NGOM is 73,371 lb (33,281 kg) for the 2017 fishing year and 95,000 lb (43,091kg) for the 2018 fishing year.

* * * * *

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